

1 James R. Condo (#005867)  
2 SNELL & WILMER L.L.P.  
3 One Arizona Center  
4 400 E. Van Buren, Suite 1900  
5 Phoenix, Arizona 85004-2202  
Telephone: 602.382.6000  
Facsimile: 602.382.6070  
jcondo@swlaw.com  
asheridan@swlaw.com

6 Richard B. North, Jr. (admitted *pro hac vice*)  
7 Georgia Bar No. 545599  
8 Matthew B. Lerner (admitted *pro hac vice*)  
9 Georgia Bar No. 446986  
NELSON MULLINS RILEY & SCARBOROUGH LLP  
201 17th Street, NW / Suite 1700  
Atlanta, GA 30363  
Telephone: (404) 322-6000  
Telephone: (404) 322-6050  
richard.north@nelsonmullins.com  
matthew.lerner@nelsonmullins.com  
12 *Attorneys for Defendants*  
*C. R. Bard, Inc. and*  
*Bard Peripheral Vascular, Inc.*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

# IN RE: Bard IVC Filters Products Liability Litigation

No. 2:15-MD-02641-DGC

**DEFENDANTS C. R. BARD, INC. AND  
BARD PERIPHERAL VASCULAR,  
INC.'S BRIEF REGARDING THE  
MOTION FILED BY LAW OFFICES  
OF BEN C. MARTIN/BAUGHMAN TO  
REDUCE AND EXEMPT CLIENT  
RECOVERIES FROM COMMON  
BENEFIT FEE AND EXPENSE  
ASSESSMENT**

(Assigned to the Honorable David G. Campbell)

The Law Offices of Ben C. Martin and Martin/Baughman have filed a motion asking this Court to modify their obligation to pay an assessment to the common benefit fund established at the outset of this multidistrict litigation proceeding (“MDL”). (Doc.

1 22144). The Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (collectively  
2 “Bard”) do not have a direct stake in this apparent dispute between Mr. Martin’s firms and  
3 the Plaintiffs’ Executive Committee in this MDL. However, a couple of issues raised in  
4 the motion do in fact impact Bard. Both issues concern the confidentiality of settlements  
5 that Bard has reached with filter claimants.

6 First, Mr. Martin’s various attempts to characterize the value of the settlements he  
7 reached with Bard arguably violate the confidentiality terms set forth in the Master  
8 Settlement Agreement among the parties. To be sure, Bard vigorously disputes the  
9 Martin firms’ description of the value of their settlements, as well as much of the  
10 description of their litigation efforts since their cases were remanded to the MDL. Still,  
11 their efforts to quantify the alleged values of their settlements (no matter how  
12 exaggerated) come perilously close to violating their contractual obligation to maintain  
13 the confidentiality of the “amount” of the settlements and all “terms and conditions”  
14 associated with the resolution.

15 Even more bothersome is their suggestion that the Executive Committee  
16 voluntarily share with them the settlement values of the MDL cases that were not  
17 remanded or transferred to other courts, or alternatively, that they be permitted to conduct  
18 discovery regarding those amounts. Not surprisingly, each and every settlement related to  
19 this MDL that has been reached by Bard is subject to a confidentiality requirement. Those  
20 provisions are vital components of the settlements. Bard could not have effectively settled  
21 thousands of cases in the mass tort context if the value of individual settlements was  
22 public knowledge. Moreover, allowing discovery regarding other settlements would not  
23 only decimate Bard’s interests in confidentiality; it would also unnecessarily complicate  
24 the final proceedings of this MDL. As the Eighth Circuit has recognized in a similar  
25 situation, “discovery in connection with fee motions is rarely permitted, and ‘a request for  
26 attorney’s fees should not result in a second major litigation.’” *See In re Genetically  
27 Modified Rice Litig.*, 764 F.3d 864, 871–72 (8th Cir. 2014) (citations omitted).

28 Based on those concerns, Bard urges the stakeholders in this dispute to be mindful

1 of their confidentiality obligations under the various settlement agreements, and  
2 respectfully asks this Court to deny the Martin firms' request to conduct discovery  
3 regarding the value of other settlements.

4

5 DATED this 2nd day of February 2022.

6

*s/ Richard B. North, Jr.*

Richard B. North, Jr.

Georgia Bar No. 545599

Matthew B. Lerner

Georgia Bar No. 446986

NELSON MULLINS RILEY & SCARBOROUGH, LLP

Atlantic Station

201 17th Street, NW / Suite 1700

Atlanta, GA 30363

PH: (404) 322-6000

FX: (404) 322-6050

richard.north@nelsonmullins.com

matthew.lerner@nelsonmullins.com

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

James R. Condo (#005867)

SNELL & WILMER L.L.P.

One Arizona Center

400 E. Van Buren

Phoenix, AZ 85004-2204

PH: (602) 382-6000

JCondo@swlaw.com

ASheridan@swlaw.com

**Attorneys for Defendants C. R. Bard, Inc. and  
Bard Peripheral Vascular, Inc.**

**CERTIFICATE OF SERVICE**

I hereby certify that February 2, 2022, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to all attorneys of record.

s/ Richard B. North, Jr.  
Richard B. North, Jr.